

TEWKSBURY Board of Health
Minutes
September 19, 2013

TB014
11/7/13

Exhibit # 7
TOWN CLERK
REGISTRARS
BOARD OF HEALTH
TEWKSBURY, MA
13 NOV - 8 PM 1:32

Call of Meeting to Order

Mr. French called the meeting to order at 7:05 PM.

The meeting was held at the Tewksbury Town Hall. Present at the meeting were, Chairman Phillip French, Vice Chairman Charles Roux, Christine Kinnon, Kathleen Brothers, Ray Barry and Health Director Lou-Ann Clement.

New Business

Appointment of Special Health Agents for the Purpose of Burial Permits

Ms. Clement stated that the Town Clerk's office has been handling burial permits for years but the State is putting in new regulations that anyone issuing burial permits shall have the authority to do so by the Board of Health. The Town Clerk is requesting that her office be authorized as Special Health Agents for the purpose of burial permits only.

Ms. Clement stated that the Town Clerk's office has issued the majority of various burial permits. In 2008, the Town Clerk issued 124 burial permits, Tewksbury Funeral Home issued 11 burial permits and Farmer and Dee Funeral Home issued 3 burial permits. The two funeral homes issue burial permits on weeknights, weekends and when the Town Clerk is closed and they should be considered alternates. In 2011, the Town Clerk issued 172 permits with Tewksbury Funeral Home issuing 7 and Farmer and Dee Funeral Home issuing 5.

Mr. French stated that they are looking for us to give the Town Clerk's office authority to grant burial permits but not naming specific people. Ms. Clement replied due to possible staff turnover, yes. They would also like a motion to give authority to Tewksbury Funeral Home and Farmer and Dee Funeral Home as alternates under the direction of the Town Clerk. Ms. Clement stated that she does not have a problem with this request.

Mr. Barry stated that in Ms. Clements' email it states that burial permits will now be coming before this Board. Ms. Clement replied no, the Town Clerk has always issued burial permits on behalf of the Board we are now authorizing this process. Mr. Barry stated that in the next bullet it says that the Town Clerk will reexamine the death certificate. Doesn't this mean that they will be reviewing their own work? Ms. Clement stated that there are two separate issues. The death certificates have always been the responsibility of the Town Clerk to review and confirm the information provided. Now they are asking the Board's authority to issue burial permits. The burial permit allows the body to be buried, which Town Clerk's office has performed this task for several years.

Ms. Brothers stated that Chapter 114, Section 45 allows the Board of Health to authorize someone to issue burial permits. Ms. Clement replied that is correct, this will formally authorize the Town Clerk on behalf of the Board of Health for burial permits only.

Ms. Kinnon asked if the Directors of the two funeral homes be appointed or should it just be the business. Ms. Clement stated that the two funeral homes should be appointed as alternates overseen by the Town Clerk. Mr. Barry stated that the funeral homes would only be used when the Town Clerk is closed. Ms. Clement replied that was correct.

MOTION - Ms. Kinnon made a motion that the Board of Health grants authority to the Office of the Town Clerk as Special Health Agents for the purpose of issuance of burial permits only on behalf of the Board of Health. The Town Clerk will be responsible for overseeing this process. The motion was seconded by Mr. Barry and unanimously voted 5-0.

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MOTION - Ms. Kinnon made a motion to approve Farmer and Dee Funeral Home and Tewksbury Funeral Home as alternate Special Health Agents for the purpose of issuances of burial permits on behalf of the Board of Health when the Town Clerk's office is closed and a burial permit is needed. These two alternates will be overseen by the Town Clerk. The motion was seconded by Ms. Brothers and unanimously voted 5-0.

Public Hearings

Variance of the "Tewksbury Board of Health Regulations for the Subsurface Disposal of Sewerage: Section 5.4 System Components, Subsection B External Grease Tanks, Located at 1624 Main Street, Tewksbury, MA 01876, Tewksbury Retirement Residence, LLC

MOTION - Ms. Brothers made a motion to open the public hearing for 1624 Main Street. The motion was seconded by Ms. Kinnon and unanimously voted 5-0.

Bob Hazelton, a mechanical engineer on behalf of Lenity Group Architects appeared for the variance request.

Ms. Clement stated that the applicant is requesting a variance from the 5,000 gallon external grease tank. They are requesting a 2,000 gallon external grease tank instead. By using Title V regulations as a guide, a 160 seat restaurant uses 15 gallons per seat per day, which would require a 2,400 gallon grease tank. Ms. Clement stated that she would recommend a 2,500 gallon external grease tank be required. She is not opposed to the variance as long as this was part of the approval.

Mr. French read the public hearing notice.

Mr. Hazelton stated that this is a retirement residence. There is a commercial kitchen that is strictly for the residents. They will not be serving a lot of greasy foods. In other similar projects, they were allowed to install a 1,500 grease tank but they would be agreeable to a 2,500 grease tank. Mr. French stated that it is the Board's job to protect the residents and our sewer system but he would agree that a 2,500 grease tank would be sufficient. Mr. Hazelton stated that he has a menu to show the Board the type of food that would be made and he believes that maintenance of the grease tank is the most critical item.

Mr. Roux stated that we are in process of revising the grease tank regulations and he understands that 5,000 gallons is excessive and 2,500 gallons is more in line with what would be required. The new regulations require that the tanks be H2O load and two compartments.

Mr. Barry asked if there are any plans to expand the facility. Mr. Hazelton replied no.

MOTION - Mr. Roux made a motion to grant the variance from Section 5.4 for 1624 Main Street with the condition that the external grease tank be 2,500 gallons and that it be 2 compartments. The motion was seconded by Mr. Barry and unanimously voted 5-0.

Mr. Hazelton asked what the next steps would be. Ms. Clement stated that three copies should be submitted of the plans and she will have the Town Engineer and Plumbing Inspector sign them off.

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Aggrieved Public Hearing of 310 CMR 15.00 the State Environmental Code Title V, Located at 108 Pike Street, Tewksbury, MA 01876, John D. Sullivan Owner

MOTION - Ms. Brothers made a motion to open the public hearing for 108 Pike Street. The motion was seconded by Mr. Barry and unanimously voted 5-0.

Mr. Roux stated that he is recusing himself due to past history with the applicant.

Mr. French read the public hearing notice.

Ms. Clement presented an email from the applicants attorney, Melissa Brown dated September 16, 2013. Ms. Clement read the email into the record. Attorney Brown requested a continuance due to a filing in court to be heard on September 23, 2013.

Ms. Clement gave a status of the project. On April 25, 2013 she issued an Order due to a failed Title V inspection dated March 25, 2013 by Stewart Septic Service. The owner was sent certified mail and it was signed for and the green return receipt card was received back to the office on April 29, 2013. The Order stated that the system must be pumped immediately by April 30, 2013 and at least once per week until the system was abandoned. The Order also stated that the property must be connected to municipal sewer by July 1, 2013. On July 8, 2013 the office received a pump slip from Stewart Septic Service dated June 20, 2013. This is the only pump slip this office has received for this property.

Ms. Clement stated that the owner had applied to connect into municipal sewer system on September 3, 2012 but has never fixed the DPW required items to finish the sewer application to allow the property to be connected to sewer.

Ms. Clement stated that on May 1, 2013 a hearing request letter was received from the owner. On May 6, 2013 an application was received. On May 21, 2013, a response letter was sent to the owner that stated the application was incomplete and there were four missing items; #3 – a brief statement of what is being requested, #4 – certified plot plan, #5 – a plan depicting the buildings, septic system, etc., and #10 – a certified abutters list. Ms. Clement stated that she also emailed the owner a copy of the response letter on May 21, 2013.

Ms. Clement stated that she issued a final notice on August 2, 2013. Ms. Clement stressed that she has only received one pump slip for this property since her Order was issued.

Ms. Clement stated that on August 20, 2013, Attorney Melissa Brown asked to be put on the agenda. Ms. Clement spoke with Town Counsel and he suggested even though the application was incomplete to hold the hearing.

Ms. Clement stated that the existing septic system was built for a single family home. This is a large structure so she assumes the single family consisted of four bedrooms. Under Title V, that would produce 440 gallons per day of septic flow from the dwelling into the existing septic system. Currently, the Town records show this as a multi-family dwelling consisting of eight dwelling units with ten bedrooms and one commercial garage. The flow would be 1,175 gallons per day with this septic system only being built for a capacity of 440 gallons per day. The order for required weekly pumping was to prevent a public health hazard, prevent surcharge, ponding, and seepage. This septic system has only been pumped once since April.

Mr. Barry stated that the Title V inspection report, on page 6 has different information. The actual bedroom count is 16 so that would give an ever larger flow of 1,760 gallons/day. This report represents that there are eight two-bedroom apartments and one commercial garage.

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Ms. Brothers asked if there are wetlands near this property. Ms. Clement replied yes, there is a stream on the site where the septic is located.

Mr. Barry stated that there is no indication of the size of the septic tank. Mr. Barry stated that the property is not tied into sewer as directed and is not properly sized for the current use.

Ms. Clement stated that with the information she has, the septic is only sized for a four bedroom house.

Ms. Brothers asked who put the septic in. Ms. Clement replied she believes it was the previous owner who was also a Sullivan.

MOTION - Mr. Barry made a motion to deny the request by the applicant to postpone the hearing. The motion was seconded by Ms. Brothers and unanimously voted 4-0.

Ms. Kinnon asked if any action from the court would affect our motion. Ms. Clement replied no, these are two separate issues. The court action deals with pending litigation. This application was not submitted with all the required information including an abutters list. He has not complied with the Title V, State Statute, or the Health Department's Order.

Mr. Barry stated that our office has gone beyond notifying the owner of what was needed for this application and it was ignored.

Mr. French added that there could be potential public health issues with this site.

MOTION - Mr. Barry made a motion to stay the Order of April 25, 2013 written by the Director including the continuation of at least weekly pumping of the septic system and that the property must be connected to municipal sewer within 30 calendar days of this motion. It is noted that only one pump slip has been received since April 25, 2013 and that the process to connect to sewer has been ongoing since September 2012. The motion was seconded by Ms. Brothers and unanimously voted 4-0.

MOTION - Ms. Brothers made a motion to close the public hearing. The motion was seconded by Ms. Kinnon and unanimously voted 4-0.

Board Member Reports

Tewksbury CARES

Ms. Kinnon stated that Tewksbury CARES is working with Officer Jenny Welch from Tewksbury Police on the 2nd Annual Drug Awareness Week. They are actively applying for grants to help defray the costs.

Ms. Clement added that she is also working with two UMass Lowell students on putting together an educational material for this week's presentation to the seniors in how they can help prevent substance abuse within their homes.

MRC

Mr. Barry stated that the MRC is looking for volunteers especially for the upcoming flu clinic season. The annual training will be held on November 9th at Merrimack Community College at the Bedford campus. More information can be found at the MRC website. The link can be found on the Health webpage.

Mr. Barry stated that October is Emergency Preparedness Month. Information is also available on the website on what is needed for a 72 Hour Go Kit in case of an emergency.

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Mr. Barry stated that October is Emergency Preparedness Month. Information is also available on the website for what is needed for a 72 Hour Go Kit in case of an emergency.

Other Business

Temporary Help

Ms. Clement stated that she has received some temporary help while the Sanitarian is on extended medical leave. Brian Lagrasse has been helping out since September 5th. Brian is trained and has over 13 years of public health experience. He has been out in the field and has caught up with the complaints and will now be starting inspections.

Shingles Vaccine

Ms. Clement stated that the Public Health Nurse has put in a request for shingles vaccines. There are some restrictions on who can get the vaccines so hopefully they will be hearing back soon. When we receive the vaccine, it will be a limited supply.

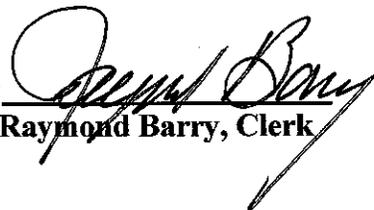
Ms. Clement stated that they are also starting flu clinic preparedness.

Announcements

Zero Waste Day

Mr. French stated that Zero Waste Day will be held on September 21, 2013 from 9:00 AM to 1:00 PM at the Wynn Middle School. The event will be held rain or shine. More information can found on their website at www.zwdtekwbury.org.

MOTION - Ms. Kinnon made a motion to close the meeting and adjourn at 8:03 PM. The motion was seconded by Ms. Brothers and unanimously voted 5-0.

Approved: 
Raymond Barry, Clerk

TEWKSBURY BOARD OF HEALTH MEETING
List of Documents for September 19, 2013
Documents can be located at the Board of Health's Office

TOWN CLERK
BOARD OF REGISTRARS
TEWKSBURY, MA
13 NOV -8 PM 1:32

Meeting Called To Order:

New Business:

Special Health Agents for the purpose of issuing burial permits

Public Hearings:

TBOH Regulations for the Subsurface Disposal of Sewerage - Variance package 2297 Main Street Tewksbury

TBOH grievance Hearing package for 108 Pike Street

email dated July 16, 2013 from Nancy Okeefe

Sewer connection plan received in office 9-5-2013 with e,ail from town Engineer

Title V Inspection report

Postponement letter

Old Business:

Board Members Reports

Other Business

Announcements

Zero Waste Day Flyer

Adjourn

Tewksbury, Massachusetts

13 OCT 28 AM 11:55

Notice of Decision

RE: Public Hearing of Tewksbury Board of Health**Regulations for State Sanitary Code 310 CMR 15.000****The State Environmental Code, Title 5: Standard Requirements for Siting, Construction, Inspection, Upgrade, and Expansion of On-Site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage****Property: Multiple Dwelling Units and Commercial Unit****Property Location: 108 Pike Street, Tewksbury MA 01876****Property Owner: John D. Sullivan, 910 Andover Street, Suite 5, Tewksbury, MA 01876**

On September 19, 2013, the Tewksbury Board of Health (TBOH) conducted a noticed public hearing in the Town Hall Auditorium for a grievance appeal.

I. Summary of Hearing Procedure

The hearing was opened and closed on September 19th, 2013. Charles Roux, Vice Chairperson of the TBOH, recused himself from the proceeding. A quorum was met throughout the hearing.

II. Nature of Proceedings

1. On April 25, 2013, Lou-Ann Clement, Public Health Director, (Director Clement) issued an order to John D. Sullivan (Mr. Sullivan) for non-compliance of the *Regulations for State Sanitary Code 310 CMR 15.000*, and *The State Environmental Code, Title 5: Standard Requirements for Siting, Construction, Inspection, Upgrade, and Expansion of On-Site Sewage Treatment and Disposal Systems and for the Transport and Disposal of Septage*, stating that the failure of the septic system endangers the environment and the public health.
2. At the request of Mr. Sullivan and further requested by Atty. Melissa Brown, his attorney (Atty. Brown), a grievance hearing was scheduled for September 19, 2013.
3. On September 17th, 2013, the Department received a request from Atty. Brown to postpone the grievance hearing.
4. On September 19th, 2013, the TBOH opened the hearing and denied the postponement of the hearing; and after conducting the hearing, TBOH upheld Director Clement's April 25th, 2013, Notice letter relative to non-compliance and ordered Mr. Sullivan to:

- Connect this dwelling to the municipal sewer system within 30 days, and
- Weekly pumping is to remain in place.

III. Finding of Facts

1. According to Tewksbury Building Department records, the existing dwelling had been converted to a multiple-unit dwelling without the necessary permits. According to Mr. Sullivan's Title 5 inspector, there are 8 residential units in the dwelling, which contains 16 bedrooms, and 1 commercial unit in the garage.
2. From the history and records regarding the property, it appears that the septic system was designed and constructed for a single-family home; and assuming a home with 4 bedrooms and according to Title 5, the septic system was designed and constructed for a minimum flow of 440 gallons per day.
3. The increased inflow to the existing septic system will create an overload and surcharge.
4. Weekly pumping is necessary to prevent any public health issues, including but not limited to, system surcharge and overload, surface ponding, and the discharge of sewerage from the septic system into the neighboring stream and abutting properties.
5. On March 29, 2013, the Department received a Title 5 inspection report, which inspection was performed on March 25, 2013, by John Di Vincenzo of Stewart Septic System, 58 South Kimball Street, Bradford, MA 01835, the inspector retained by Mr. Sullivan. The report stated that the septic system had failed the requirements of 310 CMR 15.000, Title 5.
6. On April 25, 2013, Director Clement issued an order letter to Mr. Sullivan requiring that Mr. Sullivan:
 - Pump the system immediately and by April 25, 2013, and then once a week and as often as needed until system is abandoned as required by Title 5, and forward pumping slips to the Department upon completion of the system's pumping. and
 - Make the necessary arrangements under Department of Public Works Rules and Regulations for the connection of the dwelling to the municipal sewer system by July 1st, 2013.
7. On May 1st, 2013, the Department received a letter from Mr. Sullivan requesting a hearing.
8. On May 6th, 2013, the Department received an application package for a TBOH aggrieved party public appeal hearing. The hearing package submitted by Mr. Sullivan on May 6th, 2013, omitted the necessary supporting documentation as required by the TBOH Regulations.

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9. On May 21, 2013, the Department informed Mr. Sullivan in writing that the hearing application package received by the Department was incomplete. Items were omitted from package as follows:
- The TBOH requires that the application be supported by a "... brief, which sets forth in detail all the facts relied on" (number 3 on the "Checklist for Board of Health Applicants"). A brief was not provided.
 - Certified plot plan (number 4 on the "Checklist for Board of Health Applicants") was not provided.
 - Number 5 on the "Checklist for Board of Health Applicants" requires a "... plan showing all existing buildings, septic systems, external grease traps and any proposed items . . ." However, the plan (8 copies) submitted are dated February 11, 2013, and do not document the required items listed on the TBOH's Checklist. Additionally, according to the Town Engineer's letter dated March 6, 2013, such plan (attached) requires revisions.
 - The Abutters list was omitted from the package (number 10 on the "Checklist for Board of Health Applicants").
 - The Department received one set of envelopes. However, the applicant is responsible for providing the required postage for each envelope for the abutters. Additionally, without the abutters list the Department cannot verify that all abutters are receiving the required legal notice (number 11 on the "Checklist for Board of Health Applicants").
10. Although Mr. Sullivan was ordered to begin pumping the septic system beginning April 25th, 2013, and to pump every week and provide the Department with pumping slips, the Department had not received any pumping records as of May 21st, 2013.
11. On July 8th, 2013, the Department received a copy of the pumping records for the pumping which occurred on June 20, 2013, by Stewart's Septic, 58 South Kimball Street, Bradford MA 01835.
12. On August 2, 2013, the Department issued a final notice to Mr. Sullivan to resolve the outstanding violations by August 21st, 2013.
13. On August 14th, 2013, Atty. Brown, representing Mr. Sullivan, emailed the Department requesting a grievance appeal hearing date.
14. On September 17th, 2013, the TBOH received a request to postpone the grievance appeal hearing from Atty. Brown pending outcome of a motion filed in Northeast Housing Court and scheduled to be heard on September 23rd, 2013.

- 15. Since April 25th, 2013, the septic system has been pumped by a licensed pumper once, on June 20th, 2013; and the dwelling and commercial unit have not been connected to the municipal sewer system.
- 16. The existing septic system was designed and constructed for a single-family home.
- 17. Currently, the dwelling is being used as 8 residential units, each with 2 bedrooms, and 1 commercial unit in the garage.
- 18. The flow requirements (110 gallons per day per bedroom) of an 8 unit building with 16 bedrooms and garage office space have a minimum inflow of 1,375 gallons per day, which is much greater than what the original septic system was designed and constructed for at approximately 440 gallons per day.
- 19. According to the Title 5 inspection by Mr. Sullivan's inspector, the failed system has either "backup of sewerage into facility or system component due to overload or clogged SAS or cesspool."
- 20. Weekly pumping is necessary to prevent a public health issue, the system from surcharging, surface ponding, and sewerage discharging into neighboring stream or abutting properties.
- 21. Mr. Sullivan or his attorney failed to appear at the grievance appeal hearing to provide evidence or testimony regarding the outstanding order and septic system issues and did not provide any acceptable reason for a continuance.

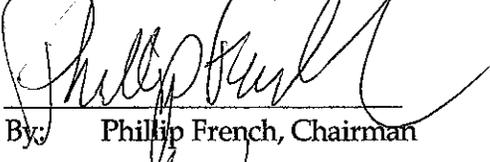
IV. Decision

The TBOH closed the grievance hearing and denied the request to postpone the grievance hearing.

Additionally, based on the facts presented, the TBOH finds that the letter of non-compliance dated April 25th, 2013, issued by Director Clement, stands and upholds Director Clement's order; and the TBOH orders Mr. Sullivan to pump weekly and to connect to municipal sewer system within 30 days of the date of this Notice of Decision.

TOWN CLERK
BOARD OF REGISTRARS
TEWKSBURY, MA
28 OCT 28 AM 11:55

TEWKSBURY BOARD OF HEALTH



By: Phillip French, Chairman

Dated: 10/28/13, 2013

TEWKSBURY BOARD OF HEALTH
Tewksbury, Massachusetts

13 OCT -7 PM 1:01

NOTICE OF DECISION

**RE: Public Hearing for Tewksbury Board of Health
Tewksbury Board of Health Regulations for Subsurface Disposal of Sewage Section 5.4
System Components subsection 5.4B
Minimum Standard for Sewage Disposal Components
Located: Tewksbury Retirement Residence, 1624 Main Street, Tewksbury MA**

The Tewksbury Board of Health (the "TBOH") at a noticed public hearing held a variance hearing in the Auditorium of the Town Hall and, after deliberation, voted on September 19, 2013, to close the variance hearing.

I. History of the Case

On August 30, 2013, the Tewksbury Health Department received a request for a variance from "Tewksbury Board of Health Regulations for Subsurface Disposal of Sewage Section 5.4 System Components subsection 5.4B" for the premises located at 1624 Main Street, Tewksbury, Massachusetts.

II. Summary of Hearing Procedure

The TBOH opened the public variance hearing in the Auditorium of the Town Hall on Thursday, September 19, 2013.

On September 19, 2013 the TBOH unanimously voted to grant a variance from the required five thousand (5,000) gallon external grease trap to a 2,500 gallon tank with a two (2) compartment tank.

A quorum was met throughout the variance hearing and thereafter, where the TBOH unanimously voted 5-0 to approve the variance for a 2,500 gallon tank with a two (2) compartment tank. The TBOH closed the variance hearing as set forth below.

III. Finding of Facts

On Thursday, September 19, 2013, the Tewksbury Board of Health approved the variance for the Tewksbury Retirement Residence located at 1624 Main Street for a 2,500 gallon grease tank with a two (2) compartment tank and that it does not create an imminent Public Health Hazard.

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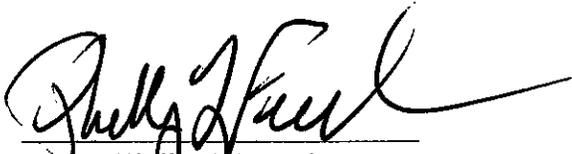
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IV. Decision

The TBOH closed the variance hearing and found that the Establishment located at 1624 Main Street is granted a variance for a 2,500 gallon grease tank with a two (2) compartment tank and that it does not create an imminent Public Health Hazard.

The TBOH is, therefore, of the opinion that the granting of this variance does not create imminent Public Health Hazard and variance is approved.

TEWKSBURY BOARD OF HEALTH


By _____
Phillip L. French,
Chairman